



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
NEW ENGLAND REGION
5 POST OFFICE SQUARE SUITE 100 OES 05-1 BOSTON, MA 02109-3912

FEB 15 2017

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jan M. Barnes
Director, Health, Safety, Environmental and Quality
Transflo Terminal Services, Inc.
500 Water Street, J976
Jacksonville, FL 33202

Re: Transflo Terminal Services, Inc., 19 Walkup Drive, Westborough, MA 02134
Notice of Noncompliance Regarding Section 112(r) of the Clean Air Act

Dear Ms. Barnes:

On January 13, 2014, representatives of the United States Environmental Protection Agency (EPA) conducted an inspection of the above-referenced facility. The purpose of the inspection was to determine the compliance of Transflo Terminal Services, Inc. ("Transflo") with the Chemical Accident Prevention Provisions of Section 112(r)(7) of the federal Clean Air Act (CAA) and the Sections 302-312 of the Emergency Planning and Community Right to Know Act. (EPCRA).

The Chemical Accident Prevention Provisions of Section 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. Part 68, require facilities which produce, handle, process, distribute, or store certain chemicals to develop a Risk Management Program, prepare a Risk Management Plan, and submit the plan to EPA. The plan must be revised and resubmitted to EPA at least every five years, or as otherwise required by 40 C.F.R. §§ 68.190(b)(2) through (7).

Based upon EPA's inspection of your facility on January 13, 2014, and other information, EPA has determined that, at the time of the inspection, Transflo failed to meet certain requirements applicable to the Risk Management Program Program 3 covered processes (the "covered process") under Section 112(r) of the CAA, as detailed below:

- The Risk Management Plan's Hazard Analysis was based on another facility and did not include site-specific factors for the Westborough, MA facility (the "Facility") (40 C.F.R. § 68.67(a)).
- The Risk Management Plan failed to address the propane storage process as a "covered process." Documentation produced by Transflo indicates that between December 1, 2013 and January 23, 2014, railcars containing propane over the threshold amount had been stored for as many as 37 days at the Facility.
- The Risk Management Plan failed to consider natural disasters such as earthquakes and hurricanes. (40 C.F.R. § 68.67(c)(1) and (2));

- The Process Hazard Analysis did not include required elements such as
 - o Engineering and administrative controls applicable to the hazards and their interrelationships such as appropriate application of detection methodologies to provide early warning of releases. (40 C.F.R. § 68.67(c)(3)).
 - o Consequence of failure of engineering and administrative controls. (40 C.F.R. § 68.67(c)(4)).
 - o A qualitative evaluation of a range of the possible safety and health effects of failure of controls. (40 C.F.R. § 68.67(c)(7)).
- The Operating Procedures (TRANSFLO 1-2 Work Instruction WI_H2004) did not include safety and health considerations relating to the properties and physical hazards of the products being transferred (e.g., whether flammable) and control measures to be taken in the event of physical contact or airborne exposure (40 C.F.R. § 68.69(a)(3)).

We acknowledge that Transflo has undertaken corrective actions to address many of the violations listed above. On February 28, 2014, Transflo submitted a Process Hazard Analysis Report that was specific to the Westborough, MA facility, in accordance with the Chemical Accident Prevention regulations at 40 CFR § 68.67. The site-specific PHA addressed earthquake, hurricane and other weather conditions, and included recommendations for actions to address the PHA's findings. Furthermore, Transflo also submitted on December 19, 2014 the results of an internal management review of the Process Hazard Analysis program, and has developed company-wide improvements to PHAs for its LPG transfer operations.

However, Transflo did not, among other things, submit a Risk Management Plan addressing the propane storage process as a "covered process" under Section 112(r) of the CAA and 40 C.F.R. Part 68.

Under Section 112(r) of the CAA and 40 C.F.R. § 68.10, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process must comply with 40 C.F.R. Part 68 by, in relevant part, the date on which a regulated substance is first present above a threshold quantity in a process. A "stationary source" is defined by 40 C.F.R. § 68.3 to include "transportation containers for storage not incident to transportation and transportation containers connected to equipment at a stationary source for loading or unloading." A "process" is defined to include any use, storage, handling, or on-site movement of a regulated substance, and further is a "covered process" if a regulated substance is present in more than the established threshold quantity. Id.

As explained in the preamble to the relevant RMP regulations, a transportation "container is 'in transportation' as long as it is attached to the motive power that delivered it to the site." 63 Fed. Reg. 640, 643 (January 6, 1998). The fact that a transportation container which is disconnected from motive power and held at a facility may also be regulated by the U.S. Department of Transportation does not limit CAA jurisdiction. As explained in a preamble to revisions to the RMP regulations, "[T]o the extent that DOT is also authorized under Federal Hazmat law to regulate activities that are at a stationary source, nothing in the CAA prohibits both agencies from exercising concurrent jurisdiction over these activities.... The exercise of concurrent jurisdiction does not supercede or limit DOT's jurisdiction." 64 Fed. Reg. 28696, 28698 (May 26, 1999).

In this case, the records produced by Transflo indicate that rail cars may stay at the Facility for up to 37 days, with an average of 19 days in December 2013 and 21 days for the reported days in January 2014. Such extended periods during which rail cars are disconnected from motive power clearly fall within the ambit of "storage not incident to transportation." Such containers are "stationary sources," and the storage of such containers would be a "process" subject to RMP regulations. In addition, the materials produced by Transflo do not establish that the Westborough facility would qualify as a "retail facility" for purposes of the exemption in 40 C.F.R. §68.126.

Accordingly, EPA determines that Transflo remains out of compliance with the RMP requirements relating to the process of storing propane in railcars, a "covered process."

Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1), gives EPA the authority to require a company to submit such information as EPA may reasonably require to determine its compliance with the CAA. Within 30 days of your receipt of this letter, please provide documentation showing that Transflo has corrected the violations cited herein, and to make any needed corrections to operating procedures that relate to the corrections.

The information should be sent to:

Leonard Wallace, IV, Enforcement Officer
U.S. Environmental Protection Agency
Office of Environmental Stewardship
RCRA, EPCRA and Federal Programs Unit
Mail Code OES 05-1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

You may, if you desire, assert a business confidentiality claim covering part or all of the information requested, in the manner described by 40 C.F.R. § 2.203(b). You should read the above-cited regulations carefully before asserting a business confidentiality claim, since certain categories of information are not properly the subject of such a claim. If no such claim accompanies the information when it is received by EPA, the information may be made available to the public by EPA without further notice to you.

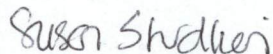
Failure to submit the requested information may subject Transflo to further federal enforcement action, including the assessment of penalties.

Finally, please be advised that the storage of propane and other hazardous chemicals in railcars for extended periods at the Facility may also require the filing of an emergency and hazardous chemical inventory form under Section 312(a) of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11011 et seq. Under Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and 40 C.F.R. §§ 370.20, 370.40, 370.44, and 370.45, a facility that is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970, and has present at the facility such a hazardous

chemical in excess of the threshold level, must prepare and submit an emergency and hazardous chemical inventory form (Tier I or Tier II form) to state and local emergency responders. The Tier I or Tier II form must be submitted annually on or before March 1. Although Section 327 of EPCRA exempts from the Section 312 reporting requirement substances or chemicals "in transportation or being stored incident to transportation," hazardous chemicals carried on transportation vehicles (including rail cars) can be subject to reporting when they are not under active shipping papers and have not reached the ultimate consignee. See, House Report No. 99-962 (Committee of Conference) October 3, 1986, 99 Cong. Conf. H. Report 962, at 311. To the extent that Transflo Services, Inc. is listed on the shipping papers as the ultimate consignee, the hazardous chemicals present at the facility are no longer in transportation or stored incident to transportation. This is the case even when the hazardous chemicals will be transloaded onto another mode of transportation and shipped to a subsequent consignee under a new set of shipping papers.

If you have any questions concerning this Notice of Noncompliance regarding Section 112(r) of the CAA, please contact Leonard Wallace at (617) 918-1835.

Sincerely,



Susan Studlien, Director
Office of Environmental Stewardship

cc: Leonard Wallace, EPA Region I
Catherine Smith, EPA Region I
Margery Adams, EPA Region I